

ENTERED

February 04, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION****UNITED STATES OF AMERICA,
Plaintiff,****v.****MANUEL SALAS,
Defendant.**§
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§**CRIMINAL NO. 2:15-790-1****MEMORANDUM OPINION & ORDER**

Pending before the Court is Defendant Manuel Salas' Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) for Immediate Compassionate Release Due to COVID-19 Circumstances. D.E. 43.

I. BACKGROUND

On February 19, 2015, officers responded to a report of a bank robbery at a Kleberg Bank in Corpus Christi, Texas. According to the victim/teller, a man later identified as Defendant entered the bank and gave her a note that read, "All the money in the bag now! Because I got nothing to lose. Do you? Now calmly or die!" Defendant stole \$488.00 during the robbery.

On February 23, 2015, officers responded to a call regarding a robbery at a First Community Bank in Corpus Christi. According to the victim/teller, a man later identified as Defendant entered the bank and gave her a note that read, "Pass me the money bitch. I have nothing to lose, 20's 50's and 100's." The victim told Defendant that she could not get the door to the cash register open because she did not have a key.

On March 24, 2015, officers responded to a report of a bank robbery at an American Bank in Corpus Christi. According to a video of the robbery as well as the victim/teller's statement, Defendant approached the victim and gave her a note that read, "Live Or Die 100's,

50's, 20's, Lo's, Now Bitch." Defendant pulled up his shirt, and the victim observed a black handgun. Defendant stole \$12,680.00 during the robbery.

Defendant pled guilty to the American Bank robbery and was sentenced to 90 months' imprisonment. He received sentencing enhancements because a firearm was brandished or possessed and because he was on probation in Nueces County, Texas, at the time of the offense. He has served 64 months (71%) of his sentence and has a projected release date, after good time credit, of January 28, 2023. Defendant now moves the Court to reduce his sentence to time served and order that he immediately be placed on supervised release with a condition of home confinement because his underlying medical condition (asthma) makes him particularly vulnerable to severe illness or death should he contract COVID-19 in prison. He states that he "has requested compassionate release at the Warden's level and has been denied relief by the Warden." D.E. 43, p 4.

II. LEGAL STANDARD

The statute, 18 U.S.C. § 3582(c)(1)(A), authorizes a court to reduce a defendant's sentence under limited circumstances:

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) *extraordinary and compelling reasons warrant such a reduction* . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added).

“Although not dispositive, the commentary to the United States Sentencing Guidelines (‘U.S.S.G.’) § 1B1.13 informs [the Court’s] analysis as to what reasons may be sufficiently ‘extraordinary and compelling’ to merit compassionate release.” *United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) (citing *United States v. Rivas*, — Fed. App’x —, 2020 WL 6437288, at *2 (5th Cir. Nov. 2, 2020)).

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. –

The defendant is (i) at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less;

(C) Family Circumstances. –

(i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children.

(ii) The incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons. –

As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary or compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. § 1B1.13(1)(A), Application Note 1.

Even if “extraordinary and compelling reasons” for early release exist, the Guidelines’ policy statements provide for a reduction in sentence only if a defendant “is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. §3142(g).” U.S.S.G. § 1B1.13(2). Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendant’s history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release. *See* 18 U.S.C. § 3142(g).

The Court must also consider whether a reduction is consistent with the applicable section 3553(a) factors. *See* 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13. The applicable statutory factors include, among others: the defendant’s history and characteristics; the nature and circumstances of the offense; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; the need to deter criminal conduct and protect the public from further crimes of the defendant; the need to provide the defendant with, among other things, any needed medical treatment; and the various kinds of sentences available. *See* 18 U.S.C. §§ 3553(a)(1)-(7).

With respect to motions for compassionate release based on COVID-19:

A review of a motion for release based on COVID-19 is highly fact-intensive and dependent on the specific conditions of confinement and medical circumstances faced by the defendant. Hence, a prisoner cannot satisfy his burden of proof by simply citing to nationwide COVID-19 statistics, asserting

generalized statements on conditions of confinement within the BOP, or making sweeping allegations about a prison's ability or lack thereof to contain an outbreak. . . . [T]he rampant spread of the coronavirus and the conditions of confinement in jail, alone, are not sufficient grounds to justify a finding of extraordinary and compelling circumstances. Rather, those circumstances are applicable to all inmates who are currently imprisoned and hence are not unique to any one person.

United States v. Koons, 2020 WL 1940570, at *4 & n.8 (W.D. La. Apr. 21, 2020) (citing *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020)).

To be sure, courts around the country, in some exceptional cases, have granted compassionate release where the defendant has demonstrated an increased risk of serious illness if he or she were to contract COVID. . . . But that is certainly not a unanimous approach to every high-risk inmate with preexisting conditions seeking compassionate release.

The courts that granted compassionate release on those bases largely have done so for defendants who had already served the lion's share of their sentences and presented multiple, severe, health concerns. . . . Fear of COVID doesn't automatically entitle a prisoner to release.

Thompson, 984 F.3d at 434–35 (collecting cases) (internal footnotes and citations omitted).

“In general, the defendant has the burden to show circumstances meeting the test for compassionate release.” *United States v. Stowe*, 2019 WL 4673725, at *2 (S.D. Tex. Sept. 25, 2019).

III. ANALYSIS

Defendant is 52 years old and suffers from asthma. According to the Centers for Disease Control and Prevention, adults of any age who have moderate to severe asthma might be at a higher risk for severe illness from COVID-19. *People with Certain Medical Conditions*, CDC (Dec. 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>. The Court nonetheless finds that any risk to Defendant's health due to COVID-19 is outweighed by the risk to the safety of the community if he is released. According to the Presentence Investigation Report (PSR, D.E. 37), Defendant's scored criminal


history included convictions for burglary of a habitation, felon in possession of a firearm, and felony possession of cocaine, and his unscored criminal history included convictions for resisting arrest, burglary of a vehicle, fleeing, driving while intoxicated, failure to identify, and evading arrest. Defendant had prior arrests for criminal trespass, assault, assault causing bodily injury to a family member, burglary of a building, public intoxication, and disorderly conduct. He also was on probation at the time of the current offense, in which he brandished a gun and threatened to kill a bank teller during a robbery.

Finally, Defendant has presented no evidence that he exhausted his administrative remedies within the BOP before filing the current motion. He maintains that he submitted a request to the warden, which was denied; however, the document he cites in support of this claim is merely a section of the BOP Program Statement explaining how to submit a request for compassionate release. *See* D.E. 43-1. Because Defendant has failed to comply with the exhaustion requirements under § 3582, his motion is not ripe for review, and the Court is without jurisdiction to grant it. *See generally, Ross v. Blake*, 136 S. Ct. 1850, 1856–57 (2016); *see also see also United States v. Reeves*, 2020 WL 1816496, at *2 (W.D. La. Apr. 9, 2020) (“While the Court is well aware of the effects the Covid-19 pandemic . . . , § 3582(c)(1)(A) does not provide this Court with the equitable authority to excuse Reeves’ failure to exhaust his administrative remedies or to waive the 30-day waiting period.”); *United States v. Clark*, 2020 WL 1557397, at *3 (M.D. La. Apr. 1, 2020) (denying motion for compassionate release based on fears of contracting COVID-19 in prison where defendant conceded he had not exhausted administrative remedies).

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) for Immediate Compassionate Release Due to COVID-19 Circumstances (D.E. 43) is **DENIED**.

It is so **ORDERED** this 1st day of February, 2021.



JOHN D. RAINEY
SENIOR U.S. DISTRICT JUDGE